

MOTIONS TO VALUE COLLATERAL

STEPS TAKEN BEFORE CRAM DOWN:

1. Have client obtain payoff balances prior to coming in office for consultation or have them call the finance company(s) while in office.

2. Determine eligibility for Chapter 13

3. Look up Fair Market Value (FMV) of vehicle

a) NADA (Black Book)

b) Internet - www.nadaguides.com

* Use average retail plus options plus/minus mileage

4. Ask debtor about secondary liens on vehicle, re:

Rose Shanis
Citifinancial
Wells Fargo
Household

5. Compare FMV to payoff balances

* This is where you determine whether or not a cram down will benefit the debtor or whether a lien strip-off of second lien or secured status motion under 506 is necessary.

6. Advise debtor:

a) Explain cram down

b) Explain benefits

c) Explain disadvantages: if case is dismissed or fails

d) Explain post petition adequate protection payments before confirmation

e) Trustee payments - split payments

7. Follow up with written explanation to debtor (see example letters)

8. Contact lender to try and work out a consent on value and percentage rate prior to filing or immediately after filing

9. File 13 (Plan) with cram down language (See Example)

10. File 506 Motion before 341 Meeting

EXAMPLES:

A. One Creditor Cram Down: Will benefit the debtor

Value = \$8,000
Debt = \$13,000 (one creditor i.e GMAC)

- * large enough difference between value and debt that cram down will give debtor money over the life of the Plan.

B. One Creditor Cram Down: Will **not** benefit the debtor

Value = \$10,000
Debt = \$11,000

- No real benefit here to the debtor (* unless extremely high interest rate, i.e. 18%

C. Two Creditor Cram Down

1. Value = \$8,000
Creditor One = \$9,000 (GMAC)
Creditor Two = \$3,000 (Rose Shanis)

- * here a 506 Motion to Determine Secured Status will benefit the debtor by removing debtor's obligation to pay Rose Shanis

2. Value = \$8,000
Creditor One = \$7,000 (GMAC)
Creditor Two = \$6,000 (Rose Shanis)

- * here a Motion to Determine the Secured Status of the second creditor will benefit debtor by paying \$1,000 of the second lien through the Plan and having the remaining \$5,000 determined to be unsecured and paid as part of the general unsecured class

Key question to ask yourself prior to doing any cram down (especially those situations where there is only one creditor, i.e. GMAC):

Will this benefit the debtor **now** and in the future?



LAW OFFICES

**RODGERS &
DICKERSON**

1301 York Road
Heaver Plaza, Suite 500B
Lutherville, Maryland 21093
Tel: 410-825-6655
Fax: 410-825-2250
www.rodgers-dickerson.com

* Client
Letter

Name: _____

Date Filed: _____

Case No: _____

VERY IMPORTANT NOTICE REGARDING YOUR CHAPTER 13 PAYMENTS

ATTACHED HERewith IS NOTICE FROM YOUR TRUSTEE, JOEL GOLDBERGER REGARDING YOUR CHAPTER 13 CASE. YOU **MUST FOLLOW HIS INSTRUCTIONS** ON HIS NOTICE OR YOUR CASE WILL NOT BE CONFIRMED.

YOUR PLAN PAYMENT AMOUNT IS: _____

YOU WILL HAVE TO MAKE YOUR CAR PAYMENT ON THE NEXT REGULARLY SCHEDULED DUE DATE AFTER YOUR PETITION IS FILED AND EVERY MONTH THEREAFTER UNTIL YOUR PLAN IS CONFIRMED. AFTER CONFIRMATION, YOU WILL NOT MAKE YOUR CAR PAYMENT ANYMORE, BUT WILL START MAKING PAYMENTS TO YOUR TRUSTEE IN THE AMOUNT LISTED ABOVE.

YOU WILL ALSO HAVE TO MAKE A PARTIAL PAYMENT TO THE TRUSTEE UNTIL YOUR PLAN IS CONFIRMED. THIS PARTIAL PAYMENT IS \$ _____. AFTER YOUR PLAN IS CONFIRMED YOUR PLAN PAYMENT TO THE TRUSTEE WILL BE \$ _____ AND YOU WILL NOT BE MAKING YOUR CAR PAYMENT.

YOU ARE RESPONSIBLE FOR MAKING THE PAYMENTS TO YOUR SECURED CREDITORS ON THE NEXT REGULARLY SCHEDULED DUE DATE AFTER YOUR PETITION IS FILED. THEY ARE:

IF YOU FAIL TO MAKE THESE PAYMENTS, YOU RUN THE RISK OF LOSS OF YOUR COLLATERAL (HOUSE, CAR, BOAT, FURNITURE, ETC) AS WELL AS THE OVERALL FAILURE OF YOUR CHAPTER 13 PLAN.



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*Client
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Name: _____

Date Filed: _____

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YOU ARE RESPONSIBLE FOR MAKING THE PAYMENTS TO YOUR SECURED CREDITORS ON THE NEXT REGULARLY SCHEDULED DUE DATE AFTER YOUR PETITION IS FILED. THEY ARE:

IF YOU FAIL TO MAKE THESE PAYMENTS, YOU RUN THE RISK OF LOSS OF YOUR COLLATERAL (HOUSE, CAR, BOAT, FURNITURE, ETC) AS WELL AS THE OVERALL FAILURE OF YOUR CHAPTER 13 PLAN.

Example

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND

-----X

IN Re:

SS#:

Set forth all names used within
last 6 years: None

Case No:

Cram Down Language

-----X

CHAPTER 13 PLAN

1. The future earnings of debtor are submitted to supervision and control of Trustee and debtor (or debtor's employer) shall pay to the Trustee the sum of \$ _____ monthly for _____ months.

2. From payments so received, trustee shall make disbursements as follows: (a) Priority payments required by 11 USC 507:

1. Trustee's Commission
2. Pay Rodgers & Dickerson legal fee in amount of \$ _____

(b) After above payments, dividends to secured creditors whose claims are duly proved and allowed as follows:

1. Pay pre-petition arrearages owed to _____ in the amount of \$ _____, including late and legal fees.

2. There is a pre-petition balance due **GMAC** in the amount of \$7,500.00. This loan is secured by a security interest in Debtor's 1998 GMC Jimmy, with monthly payment of \$500.00. The contract between creditor and debtors can be modified as permissible under 11 USC 1322(b)(2). The claim of **GMAC** in the amount of \$7,500.00 shall be paid inside the Plan together with 10%.

2. There is a pre-petition balance due **GMAC** in the amount of \$18,000.00. The contract calls for monthly payments of \$600.00. This loan is secured by a security interest in Debtors 2000 GMC Jimmy. The contract between creditor and debtors can be modified as permissible under 11 USC 1322(b)(2). The claim of **GMAC** shall be paid at the market value of \$13,500.00 plus 10%.

2. Make regular monthly post-petition payments directly to outside of Plan.

3. Trustee shall pay all allowed secured claims plus 8% interest.

4. Secured creditors shall retain their liens against debtor's property.

(c) Subsequent to or pro rata with dividends to secured creditors, dividends to unsecured creditors whose claims are proved and allowed as follows: Payments will be made on a pro rata basis to unsecured creditors disclosed in schedules of debtor.

3. If applicable, the following executory contracts are rejected:

None

4. Title to debtor's property shall revest in debtor on confirmation of a plan (or upon dismissal of case after confirmation pursuant to USC 1329 or upon closing of case pursuant to 11 USC 350.

Dated: February , 2001

Attorney for Debtor(s)

Acceptances mailed to: Rodgers & Dickerson
1301 York Road, #500
Lutherville, MD 21093

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

[REDACTED]

* Case No:
* 00-6-[REDACTED] SD

Debtor

*
* Chapter 13
* * * *

* * * *
[REDACTED]

Movant

vs

WELLS FARGO FINANCIAL LEASING

Respondent

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* * * * *

MOTION TO DETERMINE SECURED STATUS OF DEBT
UNDER SECTION 506

Pursuant to Bankruptcy Rule 3012, the Debtor by his attorney, Christopher M. Fascetta, and Rodgers & Dickerson, represents as follows:

1. At the time of the filing of the debtor's petition, under Chapter 13 of the US Bankruptcy Code, the debtor owned and still own: 1997 Mercury Sable.

2. Arcadia Financial Ltd., a creditor of the debtor, is a first lienholder in the amount of \$17,900.00.

3. Wells Fargo Financial is a second lienholder in the amount of \$3927.00. The fair market value of said vehicle is \$9,950.00 based upon the Black Book Official Used Car Market Guide. (See attached)

3. The lien of Arcadia Financial Ltd., the first lienholder, exceeds the vehicle's value. Therefore, Wells Fargo Financial's

secured value in the vehicle is \$-0-.

4. Debtor has elected to continue his contract with Arcadia Financial Ltd. pursuant to 11 USC Section 1322(b)(2) and due to the amount of the first lienholder, will pay Wells Fargo Financial \$-0- as a secured claim outside or within the Plan.

WHEREFORE, the debtor respectfully requests that:

1. This Court determine that Wells Fargo Financial's secured interest in said property be \$-0.;
2. That the balance be determined to be unsecured;
3. For such other and further relief as may be just.

Christopher M. Fascetta
Rodgers & Dickerson, P.C.
1301 York Road
Suite 500
Lutherville, Maryland 21093
(410) 825-6655

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2001,
a copy of the foregoing Motion to Determine Secured Status of Debt
was mailed by first class mail, postage prepaid to the following:

Wells Fargo Financial Services
c/o Richard A. Fine, Esq.
Fine, Gibbons & Macmeekin, P. A.
7231 Ritchie Highway
Suite A
Glen Burnie, MD 21060

Wells Fargo Financial Leasing Inc.
Att: Marilyn Charlet
4143 121st Street
Urbandale, IA 50323

Wells Fargo Financial Leasing, Inc.
Resident Agent: Norwest Financial MD Inc.
11630 Reisterstown Road
Reisterstown, MD 21136

Ellen Cosby, Trustee
P.O. Box 20016
Baltimore, MD 21284-0016

Christopher M. Fascetta

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

██████████

* Case No:
00-6-██████████ SD

Debtor

*
* Chapter 13
* * * *

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██████████

Movant

vs

WELLS FARGO FINANCIAL LEASING

Respondent

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ORDER DETERMINING SECURED STATUS OF
WELLS FARGO FINANCIAL LEASING'S CLAIM
UNDER SECTION 506

Upon Motion duly made by the Debtor, ██████████, by his
attorneys, Christopher M. Fascetta and Rodgers & Dickerson, for an
Order Determining Secured Status of Debt under Section 506, it is

ORDERED, that the secured interest in the 1997 Mercury Sable
is determined to be \$-0- and it is further

ORDERED, that the balance is determined to be unsecured.

SO ORDERED:

Dated: _____

Judge, U.S. Bankruptcy Court

1997 MERCURY SABLE Manufacturer's Code: 580

MILEAGE CATEGORY: C

* ADD * 100 ALUM WHLS - GS
250 CHROME WHEELS
75 CRUISE CONTROL
75 POWER SEAT - GS
125 CD
200 LEATHER
350 POWER MOONROOF
125 THIRD SEAT - WGN

* DEDUCT *

[PRICES INC. AT AC]

LOAN	UVC	NUMBER	MSRP	DESCRIPTION	WHOLESALE		RETAIL	
					CLEAN	AVG.	CLEAN	AVG.
7980	063	UM50U	19555	4D SEDAN	8925	7825	11425	9950
8950	064	UM55U	19555	4D STATION WAGON	9975	8775	12575	11000
9100	065	UM53S	20164	4D SEDAN	10025	8925	12675	11150
10120	066	UM58S	20164	4D STATION WAGON	11175	9925	13875	12250

1996 MERCURY SABLE Manufacturer's Code: 580

MILEAGE CATEGORY: C

* ADD * 75 ALUM WHLS - GS
200 CHROME WHEELS
50 CRUISE CONTROL
50 POWER SEAT - GS
100 CD
100 LEATHER
250 POWER MOONROOF
100 THIRD SEAT - WGN

* DEDUCT *

[PRICES INC. AT AC]

5425	062	UM51U	18360	4D SEDAN	6425	5375	8700	7275
6285	063	UM50U	18995	4D SEDAN	7325	6225	9700	8225
7195	064	UM55U	20015	4D STATION WAGON	8325	7125	10800	9225
7445	065	UM53S	21295	4D SEDAN	8475	7375	10950	9475
8355	066	UM58S	22355	4D STATION WAGON	9525	8275	12125	10475

1995 MERCURY SABLE Manufacturer's Code: 580

MILEAGE CATEGORY: C

* ADD * 50 SPT WHEELS - GS
75 CD
150 POWER MOONROOF
75 THIRD SEAT - WGN
75 LTS PKG

* DEDUCT *

[PRICES INC. AT AC]

4600	063	UM50*	18210	4D SEDAN	5675	4650	7875	6475
5445	064	UM55*	19360	4D STATION WAGON	6625	5500	8925	7425
5740	065	UM53*	20470	4D SEDAN	6825	5800	9125	7725
6530	066	UM58*	21570	4D STATION WAGON	7775	6600	10175	8625

1994 MERCURY SABLE

MILEAGE CATEGORY: C

* ADD * 150 POWER
50 LTS PKG

MODEL
LOAN UVC NUMBER M

3060 063 UM50* 17
3845 064 UM55* 19

4165 065 UM53* 20
4900 066 UM58* 21

2000 MERCURY GRA

MILEAGE CATEGORY: D

* ADD * 175 SPOR
200 CD
500 LEATH
400 UNIT

15705 026 FM74W 2
17340 028 FM75W 2

1999 MERCURY GR

MILEAGE CATEGORY: I

* ADD * 150 SPC
175 CD
400 LEAT

14560 026 FM74W
15630 028 FM75W

1998 MERCURY G

MILEAGE CATEGORY: I

* ADD * 125 SPC
150 CD
300 LEA

12390 026 FM74W
13460 028 FM75W

1997 MERCURY G

MILEAGE CATEGORY: I

* ADD * 100 SPC
75 CD
200 LE

10275 026 FM74W
11345 028 FM75W

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

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[REDACTED]

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Case No.: 00-5-[REDACTED]-SD

Debtors

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*

[REDACTED]

*

Movants

*

Chapter 13

v.

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BENEFICIAL FINANCE CORP.
P.O. Box 9055
Brandon, Florida 33509

*

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Respondent

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MOTION TO DETERMINE
SECURED STATUS OF CLAIM/LIEN

[REDACTED] and [REDACTED], (hereinafter "Debtor"), by their attorneys, David A. Rosenberg and Robert N. Grossbart, P.A., files this Motion to Determine Secured Status of Claim/Lien of Beneficial Finance Corporation, (hereinafter "Respondents"), pursuant to 11 U.S.C. §506 and Bankruptcy Rule 3012, and respectfully states:

1. That on February 28, 2000, the Debtors commenced a case in the Court seeking relief under Chapter 13 of the Bankruptcy Code.

2. That the Debtor owns a "1993 Ford Van E150 Cargo", (the vehicle), which has a perfected lien held by Ford Motor Credit in the amount of \$4,399.54. A copy of their proof of claim is attached hereto and marked as Exhibit "A".

3. That the vehicle is encumbered by a second perfected lien held by the Respondent in the amount of \$5,489.21. A copy of their proof of claim is attached hereto and marked as Exhibit "B".

4. That the value of the Debtors' vehicle is \$7,000.00 as listed in the February 2000 edition N.A.D.A. Official Used Car Guide. Attached hereto and marked as Exhibit "C" is a copy of the N.A.D.A. listing.

4. To the extent that the Respondent's claim exceeds the fair market value of the Debtors' vehicle:

\$ 7,000.00 value of collateral
\$ 4,399.54 balance due Ford (1st lien)
\$ 5,489.21 balance due Beneficial (2nd lien)
\$-2,888.75 amount exceeding value of collateral

the Debtor contends the \$2,888.75 excess is unsecured.

WHEREFORE, the Debtor prays this Honorable Court:

A. Enter an Order determining that, pursuant to Section 506 of the Bankruptcy Code and Bankruptcy Rule 3012, the Respondent's lien is unsecured to the extent it exceeds the available equity in the Debtors' vehicle; and

B. Such other and further relief as may be deemed equitable and just.

David A. Rosenberg, Esquire
ROBERT N. GROSSBART, P.A.
Federal Bar No.: 23387
Blaustein Building, Suite 1214
One North Charles Street
Baltimore, Maryland 21201
(410) 937-0590
Attorney for Debtor(s)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2000, a copy of the foregoing Motion was mailed first class, postage prepaid to the Debtor; Ellen W. Cosby, Trustee, P.O. Box 20016, Baltimore, Maryland 21234; Carlos Carrillo, Bankruptcy Rep., Beneficial Finance Corp., P.O. Box 9055, Brandon, FL 33509; The Corporation Trust, Inc., 300 East Lombard Street, Baltimore, MD 21202, Resident Agent for the Respondent.

David A. Rosenberg, Esquire

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

*

[REDACTED]

*

Case No.: 00-5-[REDACTED]-SD

Debtors

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[REDACTED]

*

Movant

*

Chapter 13

v.

*

BENEFICIAL FINANCE CORP.

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Respondent

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*

ORDER DETERMINING
STATUS OF CLAIM/LIEN

Upon consideration of the Debtor/Movant's Motion to Determine Status of Claim, grounds being stated and with/without and any response thereto, it is this _____ day of _____, 2000;

ORDERED, that the lien/claim of the Respondent, Beneficial Finance Corporation, in the amount of \$5,489.21, exceeds the fair market value, (available equity), of the Debtors' 1993 Ford Van E150 Cargo as set forth in the Debtors' Motion; and it is further,

ORDERED, that the Secured Claim/Lien of the Respondent be and is hereby reduced to \$2,600.46, the present equity in the Debtor's vehicle available to secure the lien, the balance of said claim, \$2,888.75, shall be treated as unsecured non-priority claim, and upon discharge, the Respondent shall be required to release any lien it may assert on the 1993 Ford Van E150 Cargo.

E. STEPHEN DERBY, JUDGE

cc: [suggested mailing list to follow]

Ellen W. Cosby

P.O. Box 20016

Baltimore, MD 21284

David A. Rosenberg, Esquire

Robert N. Grossbart, P.A.

1 North Charles Street

Suite 1214

Baltimore, MD 21201

Carlos Carrillo

Beneficial Finance Corp.

P.O. Box 9055

Brandon, FL 33509

██████████
██████████ Street
Baltimore, MD ██████████

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

[REDACTED]

Debtor

* * * * *

[REDACTED]

Movant

v.

FRIENDLY FINANCE CORPORATION

6340 Security Boulevard; # 200

Baltimore, Maryland 21207

Respondent

* * * * *

MOTION TO DETERMINE SECURED STATUS
OF CLAIM AND MODIFY RATE OF INTEREST

[REDACTED], (hereinafter "Debtor"), by his attorneys, David A. Rosenberg and Robert N. Grossbart, P.A., files this Motion to Determine Secured Status of Claim of Friendly Finance Corporation, (hereinafter "Respondent"), pursuant to 11 U.S.C. §§506, 1322(b) and Bankruptcy Rule 3012, and respectfully states:

1. That on July 26, 2000, Debtor commenced a case in the Court seeking relief under Chapter 13 of the Bankruptcy Code.

2. That the Debtor's 1990 Acura Legend 4D L, (with 118,000 mile), has a perfected lien held by the Respondent in the amount of \$10,383.26 and a contractual interest rate of 24%, as stated in their proof of claim and loan documents attached hereto and marked as

Exhibit "A".¹

3. That the value of the Debtor's vehicle is \$5,225.00 as listed on the N.A.D.A. web site in July, 2000, using the "Low Retail" figure considering the milage exceeds the acceptable range by 18,000. Attached hereto and marked as Exhibit "B" is a copy of the N.A.D.A. listing.

4. To the extent that the Respondent's claim exceeds the fair market value of the Debtor's vehicle:

\$ 5,225.00 value of collateral
\$10,383.26 balance due on loan
-\$5,158.26 amount exceeding value of collateral

the Debtor contends the \$5,158.26 excess is unsecured.

5. The Debtor also objects to the contract rate of interest of 24% as being unreasonable and excessive and believes that the 12% rate interest as proposed in the Chapter 13 Plan is a fair rate of return in the present market.

WHEREFORE, the Debtor prays this Honorable Court:

A. Enter an Order determining that, pursuant to Sections 506 and 1322(b) of the Bankruptcy Code and Bankruptcy Rule 3012, the Respondent's lien is unsecured to the extent it exceeds the value of the Debtor's vehicle; and

B. Enter Order providing a reduced rate of interest on the allowed secured claim pursuant to the Chapter 13 Plan; and

B. Such other and further relief as may be deemed equitable and just.

¹ Ironically, the Respondent places the value of the collateral as the same amount due on the balance of the note.

David A. Rosenberg, Esquire
ROBERT N. GROSSBART, P.A.
Federal Bar No.: 23387
Blaustein Building, Suite 1214
One North Charles Street
Baltimore, Maryland 21201
(410) 837-0590
Attorney for Debtor(s)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2000, a copy of the foregoing Motion was mailed first class, postage prepaid to the Debtor, Joel P. Goldberger, Trustee, 7310 Ritchie Hwy.; #715, Glen Burnie, MD 21061; Paul J. Donovan, Esquire, Friendly Finance Corporation, 6340 Security Boulevard, Suite 200, Baltimore, MD 21207; and to William J. Pittler, Resident Agent for Friendly Finance Corporation, 6340 Security Boulevard, Suite 200, Baltimore, MD 21207.

David A. Rosenberg, Esquire

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

*

[REDACTED]

*

Case No.: 00-5-[REDACTED]-JS

Debtor

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* * * * *

[REDACTED]

*

Chapter 13

Movant

*

v.

*

FRIENDLY FINANCE CORPORATION

*

Respondent

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* * * * *

ORDER DETERMINING STATUS OF
CLAIM AND MODIFYING RATE OF INTEREST

Upon consideration of the Debtor/Movant's Motion to Determine Status of Claim and Modify Rate of Interest, grounds being stated and with/without any response thereto, it is this _____ day of _____, 2000;

ORDERED, that the claim of the Respondent, Friendly Finance Corporation, in the amount of \$10,383.26, exceeds the fair market value of the Debtor's 1990 Acura Legend 4D L as set forth in the Debtor's Motion; and it is further,

ORDERED, that the Secured Claim of the Respondent be and is hereby reduced to

the balance of said claim, \$5,158.26, shall be

JAMES F. SCHNEIDER, JUDGE

cc: [suggested mailing list to follow]

Joel P. Goldberger
7310 Ritchie Hwy.; #715
Glen Burnie, MD 21061

David A. Rosenberg, Esq.
1 N. Charles Street
Suite 1214
Baltimore, MD 21201

Paul J. Donovan, Esq.
Friendly Finance Corporation
6340 Security Boulevard; #200
Baltimore, MD 21207

William J. Pittler
R/A for Friendly Finance Corp.
6340 Security Boulevard; #200
Baltimore, MD 21207

[REDACTED]
[REDACTED] Road
Baltimore, MD [REDACTED]